

AMENDED IN ASSEMBLY JUNE 6, 2002

AMENDED IN SENATE MARCH 20, 2002

SENATE BILL

No. 1386

Introduced by Senator Peace

February 12, 2002

An act to amend ~~Section 11019.9 of the Government Code, relating to privacy,~~ renumber, and add Section 1798.82 of, and to add Section 1798.29 to, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1386, as amended, Peace. ~~Public records — Personal information: privacy.~~

Existing law regulates the maintenance and dissemination of personal information by state agencies, as defined, and requires each agency to keep an accurate account of disclosures made pursuant to specified provisions. Existing law also requires a business, as defined, to take all reasonable steps to destroy a customer's records that contain personal information when the business will no longer retain those records. Existing law provides civil remedies for violations of these provisions.

This bill would require state agencies and businesses that maintain computer data systems that contain personal information to disclose, as specified, any breach of the security of the systems, as defined, to any person whose personal information was, or may have been, accessed by an unauthorized person. This bill would also make a statement of legislative findings and declarations regarding privacy and financial security.

~~The California Public Records Act requires state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure by express provisions of law, and upon payment of fees to cover costs.~~

~~Existing law also requires a state department or agency to enact and maintain a permanent privacy policy consistent with specified principles.~~

~~This bill would provide that information withheld pursuant to this privacy policy is not subject to disclosure under the California Public Records Act.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no. yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11019.9 of the Government Code is~~
2 ~~amended to read:~~

3 ~~11019.9. (a) Each state department and state agency shall~~
4 ~~enact and maintain a permanent privacy policy, in adherence with~~
5 ~~the Information Practices Act of 1977 (Title 1.8 (commencing~~
6 ~~with Section 1798) of Part 4 of Division 3 of the Civil Code), that~~
7 ~~includes, but is not limited to, the following principles:~~

8 ~~(1) Personally identifiable information is only obtained~~
9 ~~through lawful means.~~

10 ~~(2) The purposes for which personally identifiable data are~~
11 ~~collected are specified at or prior to the time of collection, and any~~
12 ~~subsequent use is limited to the fulfillment of purposes not~~
13 ~~inconsistent with those purposes previously specified.~~

14 ~~(3) Personal data shall not be disclosed, made available, or~~
15 ~~otherwise used for purposes other than those specified, except with~~
16 ~~the consent of the subject of the data, or as authorized by law or~~
17 ~~regulation.~~

18 ~~(4) Personal data collected must be relevant to the purpose for~~
19 ~~which it is collected.~~

20 ~~(5) The general means by which personal data is protected~~
21 ~~against loss, unauthorized access, use, modification or disclosure~~
22 ~~shall be posted, unless that disclosure of general means would~~
23 ~~compromise legitimate state department or state agency objectives~~
24 ~~or law enforcement purposes.~~



~~(b) Each state department or state agency shall designate a position within the department or agency, the duties of which shall include, but not be limited to, responsibility for the privacy policy within that department or agency.~~

~~(c) Information withheld pursuant to this section is not subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).~~

SECTION 1. (a) The privacy and financial security of individuals is increasingly at risk due to the ever more widespread collection of personal information by both the private and public sector.

(b) Credit card transactions, magazine subscriptions, telephone numbers, real estate records, automobile registrations, consumer surveys, warranty registrations, credit reports, and Internet sites are all sources of personal information and form the source material for identity thieves.

(c) Identity theft is one of the fastest growing crimes committed in California. Criminals who steal personal information such as social security numbers use the information to open credit card accounts, write bad checks, buy cars, and commit other financial crimes with other people's identities. The Los Angeles County Sheriff's Department reports that the 1,932 identity theft cases it received in the year 2000 represented a 108 percent increase over the previous year's caseload.

(d) Identity theft is costly, to the marketplace and to consumers. The Secret Service estimated the cost of identity theft at seven hundred forty-five million dollars (\$745,000,000) in the year 1997. According to a May 2000 survey by CalPIRG and the Privacy Rights Clearinghouse, the average consumer victim spends 175 hours and eight hundred dollars (\$800) resolving identity theft problems. During this time, consumers often have trouble establishing new credit, renting apartments, and finding employment, since many applications require a credit check as part of the approval process.

(e) According to the Attorney General, victims of identity theft must act quickly to minimize the damage; therefore expeditious notification of possible misuse of a person's personal information is imperative.

SEC. 2. Section 1798.29 is added to the Civil Code, to read:

1 1798.29. (a) Any agency that maintains a computerized data
2 system that contains personal information shall disclose any
3 breach of the security of the system immediately, or as soon as is
4 practicable thereafter, following discovery of the breach in the
5 security of the data to any person whose personal information was,
6 or may have been, accessed by an unauthorized person.

7 (b) For purposes of this section, 'breach of the security of the
8 system' means unauthorized access to personal information
9 contained in a database that could be used to violate Section 530.5
10 of the Penal Code.

11 SEC. 3. Section 1798.82 of the Civil Code is amended and
12 renumbered to read:

13 ~~1798.82.~~

14 1798.83. (a) Any customer injured by a violation of this title
15 may institute a civil action to recover damages.

16 (b) Any business that violates, proposes to violate, or has
17 violated this title may be enjoined.

18 (c) The rights and remedies available under this section are
19 cumulative to each other and to any other rights and remedies
20 available under law.

21 SEC. 4. Section 1798.82 is added to the Civil Code, to read:

22 1798.82. (a) Any person or business that maintains a
23 computerized data system that contains personal information shall
24 disclose any breach of the security of the system immediately, or
25 as soon as is practicable thereafter, following discovery of the
26 breach in the security of the data to any person whose personal
27 information was, or may have been, accessed by an unauthorized
28 person.

29 (b) For purposes of this section, "breach of the security of the
30 system" means unauthorized access to personal information
31 contained in a database that could be used to violate Section 530.5
32 of the Penal Code.